XI-HC-78

AF-B (28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.691 **सन् 2002**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT: Ramlal Kanwar S/o Dhobiram Kanwar, aged 21 years, R/o Pusalda, P.S. Gharghoda, District Raigarh (C.G.)

Versus

RESPONDENT: State of Chhattisgarh, Through P.S. Gharghoda, District Raigarh (C.G.)

Present:

Shri Abhay Tiwari, counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State/respondent.

Division Bench: - Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Dhirendra Mishra, JJ.

ORAL JUDGMENT

(Delivered on 26-3-2007)

L.C. Bhadoo, J.

Learned counsel for the appellant submitted that the accused is in detention since May, 2001, thereby he is in detention for about 5 years 10 months, therefore, the appeal itself may be heard finally.

Learned counsel for the State also submitted that the appeal may be heard finally.

With the consent of learned counsel for the parties, appeal is heard finally.

This appeal is directed against the judgment of conviction and order of sentence dated 5th June 2002 passed by the Sessions Judge, Raigarh in S.T. No.130/2001 whereby learned Sessions Judge after

P.T.O.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

holding the accused guilty for commission of offence under Section 302 of the I.P.C., for committing murder of Salikram, sentenced him to undergo imprisonment for life & to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for 6 months.

Case of the prosecution, in brief, is that 2-3 days before 4-5-2001 Salikram (since deceased) assaulted Dhobiram, therefore, in that connection, a meeting of Panchayat was convened in which village Sarpanch, Panch, Salikram, Dhobiram, Ramlal son of Dhobiram were present. In the Panchayat, Dhobiram informed that Salikram has assaulted him, on which Salikram replied that he had not assaulted him. Ramlal son of Dhobiram attacked Salikram with a club on his head and leg. The matter was reported next day in the police station. Salikram was taken for treatment to the Government Hospital, Raigarh. As Salikram was not treated in a proper manner, therefore, his family took him to the residence. Ultimately, he succumbed to the injuries on 23-5-2001. Receiving this report, Station House Officer, Police Station Gharghoda registered F.I.R. Ex.-P/1 for commission of offence under Section 307 of the I.P.C. As Salikram succumbed to the injuries, therefore, offence was converted into Section 302 of the I.P.C. Merg intimation Ex.-P/21 was given by Lagin Singh on 23rd May 2001. The Investigating Officer left to the house of the deceased. He prepared inquest Ex.-P/3 on the body of Salikram, after giving notice Ex.-P/4 to the Panchas. The discharge ticket of Salikram was seized under Ex.-P/5. The site plan Ex.-P/7 was prepared. Weapon of offence i.e. bamboo club was seized under Ex.-P/9. The blood stained soil and plain soil was seized under Ex.-P/10. The injuries of Salikram were examined by PW-8 Dr. M.M.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Wase. He prepared injury report Ex.-P/12. The post-mortem on the body of Salikram was conducted by PW-10 Dr. M. L. Thawait of Community Health Centre, Gharghoda. He opined that cause of death was syncope and shock because of injury to skull bone. His report is Ex.-P/16.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Gharghoda, who in turn committed the case to the Sessions Judge, Raigarh, where the prosecution examined 14 witnesses. Statement of the accused was recorded under Section 313 Cr.P.C. in which he denied material appearing against him in the prosecution evidence. He stated that he is innocent and has been falsely implicated in the crime.

Learned Sessions Judge after hearing learned counsel for the respective parties convicted and sentenced the accused as aforementioned.

We have heard learned counsel for the parties.

Learned counsel for the appellant has not disputed homicidal death of Salikram. Moreover, PW-7 Sukhmat Bai, who was present in the meeting, has stated that accused Ramlal attacked Salikram with a club. The above evidence of PW-7 is corroborated by the medical evidence of PW-10 Dr. M.L. Thawait. He has stated that he conducted postmortem on the body of the deceased. There was fracture of temporal and parietal bones. There was blood clot between the brain and bone. The cause of death was shock. Death was homicidal. Therefore, it is established that death of the deceased was homicidal in nature.

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As far as involvement of the accused in the crime in question is concerned, learned counsel for the accused/appellant has not disputed to that extent also. PW-7 Sukhmat Bai, wife of Salikram, has stated that on the fateful day Panchayat was convened in which Ramlal, and her husband were present. Ramlal attacked her husband with a club on his temporal region, chest and leg, as a result of which blood started oozing out of the nose and ear. Her husband became unconscious. PW-4 Santosh has corroborated the evidence. Moreover, this ocular evidence stands corroborated by the medical evidence. PW-8 Dr. M.M. Wase has stated that on 5-5-2001 he was working as doctor in the Raigarh Hospital where he examined injuries of Salikram. There were injuries on the body of the deceased. Blood was oozing out of the right year. There was injury on the temporal region. Haematoma in the size of 4" x 3½" was present. There was swelling on the right shoulder. Bruise in the size of 2" x ¼" was present on the left calf region. PW-10 Dr. M.L. Thawait has stated that on 24-5-2001 he conducted postmortem on the body of the deceased. There was fracture on temporal and parietal bone. Clotted blood was present between brain and bone. Injury was ante mortem in nature. Cause of death was shock. Therefore, in view of the above ocular and medical evidence, involvement of the accused is established.

Learned counsel for the accused/appellant argued that in-fact 2 days before the incident the deceased attacked father of the accused namely, Dhobiram, in that connection, Panchayat was convened. In that Panchayat, Dhobiram informed that Salikram has attacked him, which was denied by Salikram. All of a sudden, hearing the reply of

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Salikram, Ramlal became angry and he attacked Salikram with a club which he was carrying, as a result of which Salikram sustained injuries. He was hospitalized and was discharged on 15th May 2001. However, he died on 23rd May 2001. Therefore, the accused attacked the deceased in a heat of passion, all of a sudden, without pre-meditation, when Salikram deceased said that he has not attacked Dhobiram. He submitted that in the above circumstances offence against the accused under Section 302 of the I.P.C. is not made out. The offence does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

Factual aspect of the argument advanced by learned counsel for the appellant is almost correct that a Panchayat was convened in respect of beating given by Salikram to Dhobiram. When Dhobiram informed Panchayat that Salikram has attacked him, same was denied by Salikram, that fact infuriated Ramlal and he attacked the deceased with club. In this connection, evidence of PW-14 Dr. S. N. Keshari is relevant, who examined injuries of Dhobiram on 5-5-2001 in the C.H.C. Gharghoda. He noticed 5 abrasions and one contusion on the body of Dhobiram. Therefore, in fact, Salikram attacked Dhobiram, in that connection, Panchayat was convened, when Salikram denied the allegation of Dhobiram, that enraged Ramlal and he attacked Salikram on his head with a club which he was carrying. PW-10 Dr. M.L. Thawait in his evidence has not stated that injury caused on the head was sufficient in the ordinary course of nature to cause death. The fact remains that Salikram was discharged from the hospital on 15-5-2001 and died on 23-5-2001 after about 19 days of

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the incident that too he was not given proper treatment. Therefore, the above circumstances are suggestive of the fact that from the above circumstances it cannot be inferred that the accused had intention to cause death of the deceased, but the manner in which, the force with which, the part of the body where injury was inflicted, it can safely be inferred that the accused had knowledge that by attacking with club on the head, he may likely to cause death, therefore, knowledge can be attributed to the accused, as such offence against the accused under Section 304 Part-II of the I.P.C. is made out.

For the foregoing reasons, we are of the considered opinion that conviction and sentence imposed upon the accused under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal partly succeeds. Conviction and sentence imposed upon the accused under Section 302 of the I.P.C. are set aside. Instead thereof, he is convicted under section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 7 years. As per judgment, accused is in detention since 6-5-2001 till today, therefore, accused shall be entitled for set off for the above detention period against sentence imposed upon him.

In view of the above, M.(Cr.)P. No.2238/2003 & I.A. No.3572/2002 stand disposed of.

Sd/-
L.C. BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.